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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,076	01/02/2004	Sidney Schneider	SCHN/0903	1256
44060	7590	03/17/2005	EXAMINER	
BENJAMIN APPELBAUM, PH.D. ATTORNEY AT LAW 27 BENNINGTON DRIVE FLANDERS, NJ 07836			O'CONNOR, CARY E	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/751,076

Applicant(s)

SCHNEIDER

Examiner

Cary E. O'Connor

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 30 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 10-15, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10-15, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12-30-04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Huey (3,727,309). Huey shows a denture comprising a u-shaped tray 28 including outer walls, inner walls, a channel between the inner walls, a flange formed by the meeting of the inner and outer walls, and a tooth receiving portion. A plurality of teeth 10 are located in the tooth receiving portion and the denture also comprises a layer of gum receiving material 50 applied to the inner walls and flange. The gum receiving member is deformable when subjected to a temperature of about 140-150 degrees F, the gum receiving member conforming to the configuration of a gum received within the member column 6, first paragraph).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hazar (4,017,971) in view of Jeffer (5,678,993). Hazar teaches a method for fitting a denture in situ in the mouth of an individual comprising the steps of selecting the denture 10 to fit the individual, the denture comprising a tray including outer walls, inner walls, a channel 16 between the inner walls, a flange, the flange formed by the meeting of the inner and outer walls, the tray being generally U-shaped and having a tooth receiving portion. A plurality of teeth 12 are in the tooth receiving portion. A layer of gum receiving material 22 is applied to the inner walls and the flange, forming a gum receiving member. The gum receiving member is deformable when subjected to a temperature greater than the ambient temperature but less than 100 degrees C (column 6, lines 43-45). The method also includes the steps of heating the denture in water having a temperature greater than the ambient temperature but less than 100 degrees C (column 5, lines 52-54), positioning the denture within the mouth with the gum in the gum receiving member, and fitting the denture so that the gum receiving member conforms to the gum (column 5, lines 54-61). Hazar does not teach the use of a biting force to fit the denture. Jeffer teaches a method of forming a denture and liner wherein a biting force is applied to the denture to form the denture to the impression of the gum (column 5, lines 21-25). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a biting force to form the gum receiving member of Hazar, in view of Jeffer, in order to provide a more accurate fit of the gum receiving member.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huey (3,727,309) in view of Winnberg (2,752,680). Huey shows a denture comprising a u-shaped tray 28 including outer walls, inner walls, a channel between the inner walls, a flange formed by the meeting of the inner and outer walls, and a tooth receiving portion. A plurality of teeth 10 are located in the tooth receiving portion and the denture also comprises a layer of gum receiving material 50 applied to the inner walls and flange. The gum receiving member is deformable when subjected to a temperature of about 140-150 degrees F, the gum receiving member conforming to the configuration of a gum received within the member column 6, first paragraph). The denture of Huey does not lack a palate. Winnberg shows an upper denture that does not have a palate. This palateless denture takes up less room to leave more room for the tongue and a reduction of the tasting capacity would be avoided. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the denture of Huey without a palate, in view of Winnberg, in order to provide more room in the mouth and reduce the chance of changing the perception of taste.

Response to Arguments

Applicant's arguments filed December 30, 2004 have been fully considered but they are not persuasive. In response to applicant's argument that Huey does not teach submerging the denture in water greater than ambient temperature but less than 100 degrees C, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to

patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Applicant's arguments with respect to claims 7 and 19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cary E. O'Connor whose telephone number is 571-272-4715. The examiner can normally be reached on M-Th 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Application/Control Number:
10/751,076
Art Unit: 3732

Page 6

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Cary E. O'Connor
Primary Examiner
Art Unit 3732

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